

SENATE BILL 1064

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By: **Senator Madaleno**

Introduced and read first time: March 1, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Residential Property – Condemnation Procedures**

3 FOR the purpose of requiring public or private agencies defined under the law as
4 displacing agencies that displace property owners under certain circumstances
5 to provide a certain written notice to a certain owner of record of residential
6 property by a certain period of time before filing a certain condemnation action;
7 requiring the notice to be sent by certified mail; specifying the information to be
8 included in the written notice; establishing that an affected homeowner may
9 bring an action against a displacing agency for damages sustained because of
10 the failure of the agency to provide the written notice to the homeowner;
11 establishing that, under certain circumstances, a homeowner may recover treble
12 damages; requiring any meeting between a displacing agency and affected
13 homeowners to include an agenda and a review of certain rights of the affected
14 homeowners; establishing that a displacing agency that is unable to acquire
15 certain residential property by negotiation shall certify the case to a certain
16 board of property review in the county where the property is located; expanding
17 the authority of a certain board of property review to hear cases certified under
18 this Act; requiring the board to hear a certain case and determine the amount of
19 the award for an affected homeowner; establishing that certain procedures and
20 the Maryland Rules apply to any case certified under this Act; specifying that
21 for certain residential property, diminution in value includes at least a certain
22 percentage loss of the property's fair market value or the condemnation of at
23 least a certain percentage of certain land surrounding a residential dwelling;
24 defining certain terms; providing for the retroactive application of certain
25 provisions of this Act; providing for the application of this Act; and generally
26 relating to condemnation procedures for residential property.

27 BY repealing and reenacting, with amendments,
28 Article – Real Property
29 Section 12–105(b)
30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2003 Replacement Volume and 2009 Supplement)

2 BY adding to

3 Article – Real Property

4 Section 12–207.1

5 Annotated Code of Maryland

6 (2003 Replacement Volume and 2009 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article – Real Property**

10 **12–207.1.**

11 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
12 MEANINGS INDICATED.

13 (2) “AFFECTED HOMEOWNER” MEANS THE OWNER OF RECORD OF
14 A PARCEL OF RESIDENTIAL PROPERTY.

15 (3) “RESIDENTIAL PROPERTY” MEANS REAL PROPERTY
16 IMPROVED BY FOUR OR FEWER SINGLE FAMILY DWELLING UNITS THAT ARE
17 DESIGNED PRINCIPALLY AND ARE INTENDED FOR HUMAN HABITATION.

18 (B) THIS SECTION APPLIES TO THE ACQUISITION OF RESIDENTIAL REAL
19 PROPERTY BY A DISPLACING AGENCY.

20 (C) EXCEPT AS PROVIDED IN THIS SECTION, CONDEMNATION
21 PROCEEDINGS UNDER THIS SECTION SHALL FOLLOW THE PROCEDURES SET
22 FORTH IN THIS SUBTITLE, TITLE 8 OF THE TRANSPORTATION ARTICLE, AND
23 THE MARYLAND RULES.

24 (D) (1) AT LEAST 60 DAYS BEFORE FILING A CONDEMNATION ACTION
25 SEEKING TO ACQUIRE AN INTEREST IN RESIDENTIAL PROPERTY, A DISPLACING
26 AGENCY SHALL PROVIDE BY CERTIFIED MAIL AN AFFECTED HOMEOWNER WITH
27 A WRITTEN NOTICE CONCERNING THE INTENDED ACQUISITION.

28 (2) THE WRITTEN NOTICE SHALL INCLUDE:

29 (I) IDENTIFICATION OF THE INTEREST IN RESIDENTIAL
30 PROPERTY TO BE ACQUIRED AND A STATEMENT OF THE LEGAL DESCRIPTION OR
31 COMMONLY KNOWN LOCATION OF THE PROPERTY;

1 **(II) THE PURPOSE OR PURPOSES FOR WHICH THE**
2 **RESIDENTIAL PROPERTY IS TO BE ACQUIRED;**

3 **(III) THE CRITERIA THAT THE DISPLACING AGENCY USES TO**
4 **DETERMINE WHAT PROPERTIES TO ACQUIRE;**

5 **(IV) A STATEMENT THAT THE AFFECTED HOMEOWNER HAS**
6 **THE RIGHT TO:**

7 **1. SEEK LEGAL COUNSEL AT THE HOMEOWNER'S**
8 **EXPENSE;**

9 **2. MAKE A COUNTEROFFER AND ENGAGE IN**
10 **FURTHER NEGOTIATION;**

11 **3. OBTAIN AN INDEPENDENT APPRAISAL OF JUST**
12 **COMPENSATION;**

13 **4. HAVE JUST COMPENSATION DETERMINED**
14 **PRELIMINARILY BY A COURT-APPOINTED BOARD OF PROPERTY REVIEW UNDER**
15 **SUBSECTION (F) OF THIS SECTION AND, ULTIMATELY, BY A JURY;**

16 **5. CONTEST THE DISPLACING AGENCY'S RIGHT TO**
17 **CONDEMN IN THE CONDEMNATION PROCEEDINGS; AND**

18 **6. EXERCISE THE RIGHT TO RECOVER REASONABLE**
19 **LEGAL, APPRAISAL, AND ENGINEERING FEES ON THE ABANDONMENT OF A**
20 **CONDEMNATION PROCEEDING UNDER § 12-109(E) OF THIS TITLE; AND**

21 **(V) THE PROCEDURES AND TIMELINES, INCLUDING THE**
22 **RIGHT TO HEARINGS AND ARBITRATION, THAT GOVERN THE ACQUISITION OF**
23 **RESIDENTIAL PROPERTY FOR THE PROJECT.**

24 **(3) (I) AN AFFECTED HOMEOWNER MAY BRING AN ACTION TO**
25 **RECOVER DAMAGES SUSTAINED AS A RESULT OF A VIOLATION OF THIS**
26 **SUBSECTION BY A DISPLACING AGENCY.**

27 **(II) IN ADDITION TO ACTUAL DAMAGES AWARDED TO AN**
28 **AFFECTED HOMEOWNER INJURED BY A VIOLATION OF THIS SUBSECTION, THE**
29 **COURT MAY AWARD DAMAGES IN AN AMOUNT EQUAL TO THREE TIMES THE**
30 **AMOUNT OF ACTUAL DAMAGES IF THE COURT FINDS THAT THE DISPLACING**
31 **AGENCY WILLFULLY OR KNOWINGLY VIOLATED THIS SUBSECTION.**

1 **(E) ANY MEETING OF A DISPLACING AGENCY WITH AFFECTED**
 2 **HOMEOWNERS AND ANY ARBITRATION MEETING SHALL INCLUDE:**

3 **(1) AN AGENDA FOR THE MEETING; AND**

4 **(2) A REVIEW OF THE RIGHTS OF THE AFFECTED HOMEOWNERS.**

5 **(F) (1) IF A DISPLACING AGENCY IS UNABLE TO ACQUIRE THE**
 6 **PROPERTY OF AN AFFECTED HOMEOWNER BY NEGOTIATION, IT SHALL CERTIFY**
 7 **THE CASE TO THE BOARD OF PROPERTY REVIEW OF THE COUNTY WHERE THE**
 8 **PROPERTY IS LOCATED.**

9 **(2) A BOARD OF PROPERTY REVIEW, AS ESTABLISHED IN TITLE 8,**
 10 **SUBTITLE 3 OF THE TRANSPORTATION ARTICLE, SHALL:**

11 **(I) HEAR PROMPTLY A CASE CERTIFIED TO IT BY A**
 12 **DISPLACING AGENCY UNDER THIS SUBSECTION; AND**

13 **(II) DETERMINE THE AMOUNT OF THE AWARD TO BE PAID**
 14 **BY THE DISPLACING AGENCY TO THE AFFECTED HOMEOWNER.**

15 **(3) THE PROCEDURES UNDER TITLE 8, SUBTITLE 3 OF THE**
 16 **TRANSPORTATION ARTICLE AND IN THE MARYLAND RULES APPLY TO ANY**
 17 **CASE CERTIFIED UNDER THIS SUBSECTION.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 19 read as follows:

20 **Article – Real Property**

21 12–105.

22 (b) **(1)** The fair market value of property in a condemnation proceeding is
 23 the price as of the valuation date for the highest and best use of the property which a
 24 vendor, willing but not obligated to sell, would accept for the property, and which a
 25 purchaser, willing but not obligated to buy, would pay, excluding any increment in
 26 value proximately caused by the public project for which the property condemned is
 27 needed.

28 **(2) (I) [In addition,] SUBJECT TO SUBPARAGRAPH (II) OF THIS**
 29 **PARAGRAPH, fair market value includes any amount by which the price reflects a**
 30 **diminution in value occurring between the effective date of legislative authority for the**
 31 **acquisition of the property and the date of actual taking if the trier of facts finds that**
 32 **the diminution in value was BEYOND THE REASONABLE CONTROL OF THE**
 33 **DEFENDANT PROPERTY OWNER AND WAS proximately caused by [the]:**

1 **1. THE** public project for which the property condemned
2 is needed[, or by announcements]; **OR**

3 **2. ANNOUNCEMENTS** or acts of the plaintiff or its
4 officials concerning the public project[, and was beyond the reasonable control of the
5 property owner].

6 **(II) FOR A PARCEL OF RESIDENTIAL PROPERTY,**
7 **DIMINUTION IN VALUE INCLUDES:**

8 **1. A LOSS OF AT LEAST 15% OF FAIR MARKET VALUE**
9 **OF THE PROPERTY; OR**

10 **2. THE CONDEMNATION OF AT LEAST 10% OF THE**
11 **FRONT, SIDE, OR BACK OF ANY LAND SURROUNDING A RESIDENTIAL DWELLING**
12 **ON THE PROPERTY.**

13 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
14 be construed to apply retroactively and shall be applied to and interpreted to affect
15 any parcel of residential property acquired by the State Roads Commission and any
16 payment for a parcel of residential property made by the State Roads Commission for
17 the Intercounty Connector.

18 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2010, and, except as provided in Section 3 of this Act, shall apply to all
20 condemnation proceedings for which a displacing agency seeks to acquire an interest
21 in residential property by filing a condemnation action on or after January 1, 2011.